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April 7, 2014

**To:** Michael R. Peevey, Public Utilities Assigned Commissioner

**From:** Christian John Rataj, Esq., NAMIC Sr. Director State Affairs –Western Region  
Milo Pearson, PADIC Executive Director  
Shari McHugh, PADIC Lobbyist

**Re:** Comments for Rulemaking 12-12-011, Proposed Modifications to Decision 13-09-045

**Position:** Support proposed modifications

The National Association of Mutual Insurance Companies (NAMIC) and the Pacific Association of Domestic Insurance Companies (PADIC) appreciate the opportunity to submit written comments in support of the proposed modifications, because they are consistent with and in furtherance of the stated regulatory objective of protecting public safety while facilitating new entrants into the transportation industry.

NAMIC is the largest property/casualty insurance trade association in the country, serving regional and local mutual insurance companies on main streets across America as well as many of the country's largest national insurers.

The 1,400 NAMIC member companies serve more than 135 million auto, home and business policyholders and write more than \$196 billion in annual premiums, accounting for 50 percent of the automobile/homeowners market and 31 percent of the business insurance market. NAMIC has 133 members who write property/casualty and workers' compensation insurance in the State of California, which represents 32% of the insurance marketplace.

PADIC member companies write approximately \$1 billion in property and Casualty premium almost exclusively in California. Because the vast majority of PADIC insurance business is written in California, insurance regulation has a much greater impact on its members and, more importantly, its policyholders than companies who write insurance throughout the country. Approximately one half of the premium written by PADIC is in personal lines, including homeowners insurance.

NAMIC and PADIC are strong supporters of public safety, and believe that it is in the best interest of insurance consumers, transportation network companies (TNCs), TNC drivers and passengers, and the general public for Decision 13-09-045 to be modified to resolve any “insurance coverage gap” issues created by the TNC’s transportation business model.

Since non-TNC motorists are required to comply with specific financial responsibility insurance coverage requirements, it makes sense for TNCs to also be required to comply with state mandated insurance coverage requirements and coverage limits for the protection of the general public.

In response to the five questions posed in Rulemaking 12-12-011, Proposed Modifications to Decision 13-09-045, NAMIC and PADIC respectfully tender the following comments:

1) Should “providing TNC services” be defined as “whenever the TNC driver is using their vehicle as a public or livery conveyance including when the TNC app is open and available to accept rides from a subscribing TNC passenger until the app has been closed”?

NAMIC and PADIC support this definition as being pro-public safety and consistent with the long-standing and common-sense distinction between *personal* use of a motor vehicle and *commercial* use of a motor vehicle.

As the law currently stands, TNCs are able to assert a technical argument that the TNC driver is not “providing TNC services” until the subscribing passenger is physically in the TNC driver’s vehicle or the TNC driver has electronically accepted the referral of the subscribing passenger. For all practical purposes, the electronic acceptance of the passenger referral could happen as late as when the passenger enters the vehicle, so this is a distinction with little practical difference.

The problem with the TNC proposed approach is that it creates an “insurance coverage gap” for the TNC driver, passenger, and the general public for the period of time prior to the TNC driver accepting the passenger referral or actually picking-up the passenger. This “insurance coverage gap” period of time could be quite substantial in length and exposes motorists and pedestrians to unnecessary risk of uninsured harm.

The TNCs’ position that “providing TNC services” doesn’t start until the TNC driver accepts the referral or picks-up the passenger is contrary to the practical reality of what a commercial motor vehicle activity entails. Personal use of a motor vehicle ends and commercial use of the motor vehicle begins when the TNC driver gets into his/her vehicle with the intent of transporting passengers for compensation, and includes driving around looking for passengers, driving to and from passengers pick-ups/drop-offs, transporting passengers, and waiting around in the motor vehicle in areas where public or livery conveyance activities are common.

Since personal auto insurance is intended to provide motorists with coverage for personal use activities *not* commercial use activities, and personal auto insurance policies are *not* underwritten and rated for commercial risk of loss exposure, a TNC driver does not have personal auto insurance coverage for *any* public or livery conveyance activities. If TNCs are allowed to

exclude insurance coverage for certain public or livery conveyance activities, i.e. all commercial driving activities prior to the acceptance of the passenger or pick-up of the passenger, TNC drivers, passengers and the general public will be exposed to injuries and damages where there is no insurance coverage to pay for the medical bills or auto repairs.

Requiring TNCs to provide insurance coverage from the time when the personal use of the motor vehicle ends and the commercial use of the vehicle begins makes sense and promotes public safety far better than a regulatory approach that allows TNCs to define commercial use in a way that is inconsistent with the long-standing and well-established legal distinction between personal use and commercial use of a motor vehicle. TNCs shouldn't be allowed to manipulate this clear practical and legal distinction merely because it increases their profits.

Although NAMIC and PADIC fully support the proposed modification to the definition of "providing TNC services", we respectfully submit the following revisions to clear up any possible ambiguities as to the scope of the definition (suggested revisions are in bold font):

**"Whenever the TNC driver is using their vehicle as a public or livery conveyance, or for prearranged transportation services for compensation, including when the TNC online-enabled application, platform, or communications device is open or logged onto and available to accept rides from a subscribing TNC passenger until the TNC online-enabled application, platform, or communications device has been closed or logged off and no longer available to accept rides from a subscribing TNC passenger."**

NAMIC and PADIC believe that the suggested revisions to the proposed modifications to the definition of "providing TNC services" are reasonable and appropriate, because: a) "public or livery conveyance" are precise legal terms of art and the pending legislation refers to the TNC activity as being a "prearranged transportation for compensation", so for the sake of uniformity and consistency between state laws and regulations it makes sense to include both descriptors in the definition; and b) the word "app" may have a specific information technology definition that could limit the scope of the regulation, so it is appropriate to broaden the definition to include other online platforms and communications devices.

2) Should TNCs be required to maintain commercial liability insurance policies with the proposed coverage limits?

NAMIC and PADIC support the proposed modification, because it is consistent with the clear fact that TNC activities are commercial in nature and commercial operations are generally required to procure commercial liability insurance coverage.

3) Should TNCs also be required to maintain medical payments coverage, comprehensive and collision coverage, and uninsured/underinsured motorist coverage with the proposed limits?

NAMIC and PADIC support the proposed modification, because commercial liability coverage typically does not provide UM/UIM, Med Pay, and first-party collision/comprehensive coverage. Therefore, it makes sense for the TNC to be required to provide these minimal limits coverages

to protect TNC drivers and passengers.

4) Should the proposed modifications also apply to Uber Technologies, Inc.?

The specific legal and organizational relationship between Uber Technologies, Inc. and Uber X is unknown to NAMIC and PADIC, so we do not have an opinion on this issue. However, it may make sense to apply the regulation to Uber Technologies, Inc. in addition to Uber X, because some Uber websites list Uber X as being part of the Uber Technologies, Inc. business organization. Consequently, public welfare may be better served by requiring Uber Technologies, Inc. to comply with the regulation so that there is no “organizational structure gap” that creates a risk of an “insurance coverage gap” for the general public.

5) Should all *Ex parte* Communications be reported in this quasi-legislative proceeding?

NAMIC and PADIC do not have a strong opinion on this issue. If the Assigned Commissioner believes that, in light of the current state of flux and change in TNC pronouncements to regulators, legislators and the public throughout the country, that it is in the best interest of the rulemaking and legislative process to have access to *Ex Parte* TNC communications and information relating to their operations, insurance coverage offerings, and business models, NAMIC and PADIC support the proposed modification.

Thank you for your time and effort on this matter of significant importance to the public safety of citizens of the State of California.

Please feel free to contact Christian J. Rataj at 303.907.0587 or at [crataj@namic.org](mailto:crataj@namic.org), or Shari McHugh at (916) 930-1993 or [smchugh@mchughgr.com](mailto:smchugh@mchughgr.com), if you have any questions.

Respectfully,



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